IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.32477 of 1998

Between:
The Management of Bhagyanagar Khadi Samithi,
4-4-266, Sultanbazar, Koti, Hyderabad,
rep.by its Member Secretary

..... PETITIONER

AND
The Presiding Officer, Labour Court-I,
2nd Floor, Chandravihar Building,
Nampally, Hyderabad and another

.....RESPONDENTS

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.32477 of 1998

ORDER:

Heard the learned counsel on either side.

The petitioner, Management of Bhagyanagar Khadi Samithi, is a Society, established for promoting the Gandhian Ideals and Training for Rural People. As a part of its philosophy, it undertakes training of people in manufacture of Khadi and village products. The 2nd respondent-workman has joined this establishment as an Instructor on 30.03.1978. While he was working at the establishment of the petitioner at Alladurg, Medak District, he suddenly stopped attending to duties from 19.10.1990 onwards. Since the keys of the establishment are with him, he handed them over to one of the incharges on 14.02.1991 and did not turn up from employment thereafter. But, however, on the ground that the petitioner-management herein has terminated his employment without following the procedure, prescribed under Sec.25 (F) of the Industrial Disputes Act, 1947, the 2nd respondent-workman has raised an industrial dispute in I.D.No.25/1995 before the Labour Court. The same was decided by an award passed on 11.08.1998, ordering the petitioner-management herein to reinstate the 2nd respondent-workman into service with continuity of service and attendant benefits. But,

however, he was denied 50% of the back wages, as a balancing act of the interests between both the parties. It is, this award, which is under challenge in the present writ petition.

The learned counsel for the petitioner principally raised three contentions, viz. (1) the approach of the Labour Court is completely proceeded on wrong assumptions and presumptions, and consequently, it has misguided itself in ordering for the reinstatement into service of the 2nd respondent-workman; (2) the benefits which have been accorded to the 2nd respondent-workman, apart from reinstatement, have not been based upon any principle, much less upon a rationale one; and (3) the conduct of the 2nd respondent-workman being wholly at fault, the award, with all those benefits, amounts to an improper exercise of discretion on the part of the Labour Court.

Per contra, Sri A.K.Jayaprakash Rao, appearing for the 2nd respondent-workman would contend that the 2nd respondent-workman had to stay away from duty for a compelling illness, and the inference, which the petitioner-management has drawn that he had abandoned the employment on his own, is completely taken out of context, and that the procedure that is contemplated before terminating the employment of the 2nd respondent-workman has not been followed by the petitioner-management, and the petitioner-management had no right of any manner to question the impugned award of the Labour Court. The learned counsel would also commend that the Labour Court had properly and correctly exercised the discretion vested in it under Sec.11-A of the Industrial Disputes Act and hence has denied 50% of the wages

in favour of the workman. Alternatively, the learned counsel for the 2nd respondent-workman would urge that the petitioner-management has reinstated the 2nd respondent-workman in November, 1998 and that he is continuing in service ever since. The petitioner-management has also deposited half of the quantum of back wages awarded by the Labour Court, amounting to approximately Rs.9,400/- which has been permitted to be withdrawn by the 2nd respondent-workman, as the same is needed for his own sustenance. Therefore, the learned counsel would urge that the 2nd respondent-workman has already been reinstated into service, and when he has been rendering services usefully to the petitioner-management, he should not at this stage be denied the right to continue in the employment of the petitioner-management and that he should not also be compelled with any accountability for refunding the amount of back wages which has been deposited by the petitioner-management.

The 2nd respondent-workman had raised the industrial dispute in question in 1995. He had placed on record the appreciation of his services. He placed the medical reports, which are marked as Exs.W5 and W6 to justify his illness, which compelled him to stay away from duty. The petitioner-management had specifically confronted the 2nd respondent-workman, when he examined himself as WW 1 with Ex.M4, an inland letter, addressed by him to the Manager at Tekmal branch of the petitioner society. These aspects have been taken into consideration by the Labour Court. Therefore, the Labour Court had considered the cause of illness as a justifiable reason for which the 2nd respondent-workman had stayed away from the duty.

Sri V.Narasimha Goud, the learned counsel for the petitioner-

management is right in commenting that without considering exactly as to the nature of illness, the Labour Court should not have jumped to such a conclusion. But the fact remains that the 2nd respondent-workman had placed the medical reports as Exs.W5 and W6 and they are not disputed by the management for their genuineness. Therefore, it may not be improper for the Labour Court to have looked into Exs.W5 and W6 and conclude that the 2nd respondent-workman was suffering from illness. Therefore, to that extent, the finding of the Labour Court may not be characterized as a totally perverse finding as to mean that no reasonable body of men would have arrived at such a conclusion on the base of Exs.W5 and W6. I, therefore, reject the contention canvassed by the writ petitioner.

But nonetheless, the Labour Court has rightly observed that the 2nd respondent/workman is also required to conduct himself with necessary discipline and also follow the normal procedures of securing leave of absence while staying away from duty, and at any rate, when the absence is considered to be for a long period, there should have been obtained by him, the necessary permission. It is not in dispute that 2nd respondent-workman has stayed way from duty from 19.10.1990 and that he had delivered the keys of the establishment under his charge some time on 14th or 15th February, 1991 and that he had not been very happy with his employment, which the contents of Ex.M4 inland letter discloses unmistakably. These aspects also do not vest the petitioner-management with a right to terminate the employment of an indisciplined or erring workman like the 2nd respondent herein, without following the

procedure either prescribed by itself or by complying with the scheme, contained under Sec.25 (F) of the Industrial Disputes Act. There is hardly any dispute on this count that the petitioner-management has not followed the said procedure at all and they are happy to have declared the writ petitioner to have abandoned his employment and made substitute arrangements.

Therefore, if the petitioner-management has not terminated the employment of the 2nd respondent-workman by following the due procedure, they cannot resist the offer of the 2nd respondent-workman to resume his duty. Looked at this angle, the impugned order of reinstatement passed by the Labour Court is not liable to be characterized as completely illegal exercise carried out by the Labour Court. But nonetheless, exercise of discretion ought to have been carried out on proper lines. In the absence of any valid material, to demonstrate that the 2nd respondent-workman had stayed away from duty only due to the circumstances which are beyond his control due to prolonged illness, the Labour Court ought not to have awarded the back wages. But, in the instant case, back wages to the extent of 50% has been awarded. This appears to be grossly improper on the part of the Labour Court. It made no attempt to ascertain as to whether the 2nd respondent-workman could be gainfully employed anywhere in the interregnum, and that he alone was responsible for the entire period of his absence from service, was sufficient to deny back wages. Without making any such effort, it had exercised the discretion by cryptically ordering for payment of 50% of back wages. Therefore, to that extent, the learned counsel for the petitioner is right and the award passed by

the Labour Court deserves to be modified.

The subsequent developments, as pointed out by the learned counsel for the 2nd respondent-workman, while submitting his alternative pleas, are liable to be taken into account. The workman concerned has been reinstated some time during November, 1998, pursuant to the award in question. He had been continuously rendering services with the petitioner-management herein. Obviously, the petitioner-management is not so unhappy to continue him in service after his reinstatement. In such circumstances, modifying the award of the Labour Court, which ordered for his reinstatement, does not arise. The workman has also been permitted to withdraw a sum of Rs.9,400/- which was deposited by the petitioner-management, pursuant to the interlocutory orders passed by this Court, while entertaining this writ petition. Therefore, ends of justice would be met, if the award of the Labour Court is modified to the extent of permitting the 2nd respondent-workman to retain the sum of Rs.9,400/- which was deposited by the petitioner-management and withdrawn by him, as representing the entire quantum of back wages. For the period he kept himself out of employment from 19.10.1990 till November, 1998, when he eventually got reinstated, he will not be entitled to get any benefits for this period. But, however, the 2nd respondent-workman is certainly entitled to the credit of the service rendered by him prior to 19.10.1990 to be added to the service that is rendered by him from November, 1998 onwards upon his reinstatement. In other words, the attendant and continuity of service benefits will be accorded to the 2nd respondent-workman without any benefit in any manner being accorded for the period in between

19.10.1990 to November, 1998. With this modification of the Award in question, the writ petition stands disposed of.

Accordingly, the Writ Petition is disposed of. Under circumstances, there shall be no order as to costs.

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NOOTY RAMAMOHANA RAO,J

Dated:17.12.2007
Dsr